

## CALCUTTA HIGH COURT

K.P. Roy

Vs.

D. Rudra

Civil Revn. No. 482 (W) of 1971

(Anil K. Sen, J.)

06.03.1971

### ORDER

**Anil K. Sen, J.**

1. This Rule and a number of Writ Petitions have been heard together as they involve common questions of law. Facts are not more or less disputed though the plea raised on behalf of the petitioners that there exists such insecurity that it is not possible for them to act when appointed as Presiding or Polling Officers in the ensuing election without facing the risk to their life or personal safety is contested and denied by the respondents. All the petitioners feel themselves aggrieved by the orders passed by the respective District Election Officers under Section 26 of the Representation of People Act, 1951 (Act 43 of 1951) (hereinafter referred to as the said Act) appointing them against their will either as Polling Officer or as Presiding Officer in the ensuing election. They are all praying for an appropriate Writ for setting aside the said orders.

2. It would be sufficient if the facts and circumstances which led to the impugned order in the Rule itself are only set out in this decision.

3. On January 18, 1971, the District Election Officer Howrah wrote a letter to the Divisional Accounts Officer, Eastern Railway, Howrah asking from him a list of staff of his Office who could be appointed as Presiding or Polling Officers. In answer to this letter the Divisional Accounts Officer on January 25, 1971, informed the District Election Officer that the staff serving under him have expressed their unwillingness to discharge any function as Presiding or Polling Officer in view of insecure conditions prevailing in the State. On January 28, 1971, the Divisional Accounts Officer, however, sent names of eight persons who are willing to act as such. The District Election Officer was not satisfied with the same and he on February 2, 1971, wrote a letter to the Divisional Accounts Officer threatening him with prosecution if he fails to furnish a list of all employees serving under him. It is only under this compulsion that the District Accounts Officer sent on February 5, 1971 a complete list of employees. Immediately thereafter the employees themselves made a representation to the District Election Officer intimating their unwillingness to act as Polling or Presiding Officer on the same ground as referred to in the letter dated January 25, 1971 of the Divisional Accounts Officer. In spite of these representations on

February 12, 1971 an order was passed under Section 26 (1) (3) of the said Act appointing the petitioner to be the Polling Officer at Dhandoli, Police Station Shyampore District Howrah. It is this order which is the subject-matter of challenge in this Rule.

4. Under similar circumstances the other petitioners in the other Writ Petitions on which Rules have not yet been issued are disputing similar orders appointing them either as Presiding Officer or as Polling Officer.

5. Mr. Dutta Sharma appearing in support of this Rule and following him Mr. Sinha and Mr. Palit appearing in support of the other Writ Petitions have raised certain issues of far reaching consequences. They contend that Section 26 of the said Act gives no authority to the District Election Officer to appoint anyone either as a Presiding Officer or as a Polling Officer except with his consent and as such the impugned orders are ultra vires the powers of the District Election Officer. Alternatively, it is contended by them that if the said provision be interpreted to confer such a power on the District Election Officer it must be deemed to be void being violative of the fundamental rights guaranteed under Article 19 and Article 21 of the Constitution. It should, however, be noted that though the petitioners in the Writ Petition had pleaded that the impugned orders infringe their fundamental rights there is no specific pleading of unconstitutionality so far as this provision of the Act is concerned and in the manner contended for by Mr. Sinha.

6. Mr. Advocate-General appearing for the District Election Officer and Mr. Bose appearing for the Union of India in the applications of Anup Roy Ghatak and Subhas Chandra Dey (wherein only the Union of India has been made a party) contested the points raised on behalf of the petitioners. Mr. Advocate-General has contended that if not expressly at least by necessary implication Section 26 of the said Act confers ample power to the District Election Officer to appoint and thereby impose the obligation of an Office of a Presiding Officer or a Polling Officer under the Act on any person. Mr. Advocate-General has contended that if the Court finds any ambiguity in the provision itself the said ambiguity should be solved by putting a construction which supports his contention inasmuch as such construction would be not only in consonance with the scheme of the Act but would also fulfill the object and the purpose behind the legislation. Mr. Basu appearing for the Union of India has adopted the contentions of Mr. Advocate-General and he has also referred me to the different provisions of the Rules to indicate that such a construction is the only possible construction of Section 26 of the Act. On the question of constitutionality of the provision Mr. Bose has raised an objection that as this provision in pith and substance comes within the sanction of Article 23 (2) of the Constitution and as the said Article should be read to exclude application of Articles 19 and 21 on its field, the petitioners are not entitled to dispute the validity of the provision except as under Article 23. Judging on the basis of the provision of Article 23, according to Mr. Bose, when it is not disputed that this requisition of an involuntary service is for an admitted public purpose of aiding the holding of the election, the provision of the statute must necessarily be upheld. Alternatively, Mr. Bose has contended that even if the provision be justifiable under Articles 19 and 21 there is no infringement of the rights guaranteed by the said provisions by the provision of Section 26 of the Act beyond the sanction of the Constitution and as such there is no scope for a contention that impugned provision infringes any of the fundamental rights of the petitioners.

7. If the petitioners succeed on the first point raised on their behalf it would not be necessary for me to enter into the other issue as to the unconstitutionality of the statutory provision on the

ground of infringement of fundamental rights beyond reasonable limits. On the first point raised I had some anxious moments and it is only after some serious thinking that I could come to my conclusion - the difficulty faced being with the language used in Section 26 and the ostensible uncertainty of the implication thereof.

8. According to the learned Advocates for the petitioners in order to be a binding and effective appointment there must be an offer and acceptance - offer by the person making the appointment and acceptance by the person so appointed. Section 26, according to the learned Advocates, has not abrogated this requirement. In their view this Section only empowers the District Election Officer to appoint Presiding and Polling Officers and thus makes him the appointing authority but the appointment is to be made in the usual manner by way of a contract. They strongly contend that this Section gives no authority to the District Election Officer to impose any appointment unilaterally or thereby to compel any person to discharge the obligations arising out of such appointment against his will and without his consent.

9. Mr. Advocate-General, on the other hand, has referred to the constitutional provisions regarding holding of election, to the preamble of the Act and the different provisions thereof. Referring to these Mr. Advocate-General has contended that appointment of polling personnel including Presiding or Polling Officers on a contract is wholly inconsistent with the scheme of the provisions of the Constitution and the Statute. I shall have occasion to refer in further details to his contention hereinafter. Relying on these Mr. Advocate-General has strongly contended that this Court should interpret Section 26 of the said Act to authorize the District Election Officer to make an appointment unilaterally and impose the obligation on the basis of such appointment.

10. In my view, offer and acceptance are necessary in all cases where appointments are made on contract. But it is not correct to think that there cannot be any appointment except on contract. It would be useful to refer to and appreciate the implication of the term 'appoint' or 'appointment'. A reference to the Shorter Oxford Dictionary would show that the term 'appoint' has been defined to mean "to make an appointment" and the word 'appointment' again has been defined to mean "the action of nominating to or placing in an office". The term on the meaning as aforesaid can very well be interpreted to confer powers to make unilateral appointment in respect of a person even against his will and without his consent by nominating him to a particular Office. The term by itself does not necessarily require that before a person can be appointed his consent has got to be taken. Right to appoint one unilaterally is not inconsistent with the meaning or implication of the term "appoint". Therefore, in my view, where appointments are made under a statute or in exercise of statutory powers appointments can be made in accordance with the statute and if the statute so sanctions also unilaterally. Even in cases of such appointments it is true that the appointee can still refuse to accept the obligation or to act on such appointment if there is no legal compulsion. In cases however, where there is legal compulsion, the appointee can refuse only at his own peril. Therefore, the real question that arises for consideration in the present case is as to whether Section 26 merely specifies the District Election Officer to be the appointing authority in respect of Presiding Officers and Polling Officers and does nothing else or whether it empowers the District Election Officer to appoint unilaterally any person even against his will as a presiding or a polling officer and thus compel him to discharge the obligations of such office at the peril of prosecution under Section 134 of the said Act in default. It is true that except using the term "shall appoint" the Section does not specifically say that the District Election Officer can impose an appointment on a person against his will. Nor does it even say that the District

Election Officer can appoint any person to be a presiding or a polling officer. Thus it has been left to the Court on a proper construction to find out the true import of this provision. On the point of construction, in my view, there is great substance in the contention of the learned Advocate-General that when words may vary in their meaning with the circumstances with which they are used, it would be necessary for the Court to find out the true import by looking into the attending circumstances and the object of the statute appearing therefrom and give the term such a construction as would be in consonance therewith. Reliance has been placed by the learned Advocate-General on the following observation of Lord Blackburn in the case of *River Wear Commrs. v. Adamson*<sup>1</sup>, To quote the words of Lord Blackburn:

"In all cases the object is to see what is the intention expressed by the words used. But from the imperfection of language, it is impossible to know what that intention is without inquiring further and seeing what the circumstances were with reference to which the words were used and what was the object, appearing from those circumstances which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they are used."

11. Mr. Sinha on the other hand draws my attention to Craies on Statute (6th Edition) at page 126 and has contended that if the circumstances are to be referred to or taken into consideration, the circumstances must be the circumstances prevailing at the time when the Act was passed. But that makes no difference nor does the learned Advocate-General refer to or rely upon any circumstance other than attending circumstances. That apart it is permissible to look into the history for the purpose of aiding the interpretation of a Statute. See the Claim of the Viscountess Rhondda, (1922) 2 AC 339. Here what Mr. Advocate-General contends is that the true meaning of the term is to be found out with reference to the circumstances as appearing from the statute and its object.

12. He first draws my attention to the provisions of Part IV of the Constitution. Article 324 vests the entire superintendence, direction and control of the preparation of the electoral rolls for and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President in a Commission called the Election Commission. The said Commission is constituted under the said Article. Article 327 empowers the Parliament to make laws providing for all matters relating to and in connection with the election to either House of Parliament or either House of Legislature of a State including preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing due constitution of such House or Houses. It is under this Article that the Representation of People Act has been passed by the Parliament.

13. In this Act, Part IV provides for the administrative machinery for the conduct of election. Section 19A empowers the Election Commission to delegate its functions.

<sup>1</sup>(1877) 2 AC 743, 763

Section 20 provides that subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State shall supervise the conduct of all elections in the State under this Act. Section 20A provides that subject to the superintendence, direction and control of the Chief Electoral Officer, the District Election Officer shall co-ordinate and supervise all work in the district or in the area within his jurisdiction in connection with the

conduct of all elections to Parliament and the Legislature of the State. Section 21 provides that the Election Commission in consultation with the Government of the State, shall designate or nominate a returning officer for a constituency.

14. Section 22 provides for Assistant Returning Officers. Section 24 provides for the duties of the Returning Officer. Section 25 provides that the District Election Officer shall with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency. Then comes Section 26 which is set out hereinunder.

"Appointment of presiding officers for polling stations- (1) The district election officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election;

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for a candidate in or about the election to be the polling officer during the absence of the former officer and inform the district election officer accordingly :

Provided further that nothing in this sub-section shall prevent the district election officer from appointing the same person to be the presiding officer for more than one polling station in the same premises.

(2) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder.

(3) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorized by the district election officer to perform such functions during any such absence.

(4) References in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorized to perform under sub-section (2) or sub-section (3) as the case may be.

(5) Any reference to a district election officer in Section 25 and in this section shall in relation to a constituency in a Union Territory, be construed as a reference to the returning officer for that constituency."

15. Sections 27 and 28 provide for the statutory duties attached respectively to the offices of the presiding and polling officers. The District Election Officer in terms of the interpretation clause means a person nominated or designated as such by the Election Commission in consultation with the Government of the State and similarly, the Chief electoral officer is one designated or nominated as such by the Election Commission in consultation with the Government of the State. It would be pertinent to note that in the appointment of these Chief Electoral Officers, District Election Officers or even Returning Officers, the question of appointment with consent does not arise at all because such officers are appointed on being nominated or designated as such by the

appropriate authority. Then reference has been made by the learned Advocate-General to Section 134 of the said Act which clearly indicates that the statute has imposed a compulsion in the matter of discharging the official duties which the statute imposes on officers being appointed as presiding and polling officers. Mr. Advocate-General has also drawn my attention to the fact that the election has to be held on the notifications being issued within the time schedule as provided and great importance has been laid on this scheme by the learned Advocate-General in contending that in such a scheme it is not possible to envisage that the appointments in respect of presiding and polling officers are to be made by offer and acceptance and by undergoing all the necessary formalities therefor. Relying on all these factors and also relying on the provisions of Article 324(6) of the Constitution and Section 159 of the said Act, Mr. Advocate-General contends that this Court should construe Section 26 to confer power on the District election officer to recruit personnel for appointment as presiding or polling officers unilaterally and irrespective of their consent.

16. In my view, there is substance in this contention. Such a contention is not only in consonance with the object of the statute and the purpose to be served but also follows from the scheme of the enactment referred to and relied on by the learned Advocate-General. It is well-known that the election has to proceed according to the time schedule provided and the requirement of presiding and polling officers would also be many in number. If appointments to such officers are to be made under a contract with them and with the necessary formalities therefor, it may not be possible for the authorities to provide the machinery for the election in consonance with the time schedule and the very purpose would be lost and object frustrated. When the different provisions of the enactment clearly indicate appointment to the different other posts irrespective of such consent and when the law provides for legal compulsion to discharge the functions of a polling or a presiding officer, it would be only consistent with the scheme to hold that appointment to such posts may be made unilaterally and irrespective of the consent.

17. In this regard it would also be necessary to refer to the section itself which has been quoted hereinbefore. The two sub-sections viz. (2) and (3) provide for casting of obligation by the District Election Officer or the presiding officer unilaterally. Sub-section (1) having provided for exclusion of any person in the employment of a candidate for election in the matter of appointment of presiding or polling officers, naturally suggests that any other person can be so appointed. Then comes the proviso to this sub-section which empowers a presiding officer to appoint any person who is present in the polling station to be a polling officer. This proviso unmistakably confers powers for unilateral appointment of a person as a polling officer irrespective of his consent. If the proviso is read as such, there is no reason why the sub-section should be read otherwise.

18. Mr. Palit appearing in support of one of the Writ petitions has sought to distinguish the proviso by contending that the proviso only provides for a contingency or an emergency and both the sub-sections and the proviso need not be read alike. On the scheme of things I am, however, unable to distinguish or differentiate between the sub-section and the proviso in the manner suggested by Mr. Palit.

19. Mr. Sinha on the other hand, has contended that if the proviso specifically provides for involuntary appointment the omission thereof in the sub-section should be construed to be intentional on the part of the legislature. It being so, according to Mr. Sinha, this Court should not

import into the sub-section something which has been intentionally omitted therefrom by the legislature. I am, however, unable to agree with Mr. Sinha that reading the section as a whole I can find out any intention on the part of legislature to omit from the sub-section what it has provided in the proviso while the proviso uses the term 'may appoint', the first sub-section uses the term 'shall appoint'. But the words are used in such a perspective that the implication is quite explicit that appointments are to be made unilaterally and the proviso only gives somewhat more clear indications in this respect.

20. For these reasons I agree with learned Advocate-General that Section 26 should be interpreted to mean to confer power on the District Election Officer to appoint persons irrespective of their consent as polling or presiding officers and such a construction would be in consonance with the object of the statute and purpose for which it has been enacted. Such construction is supported by the ordinary principles of construction of avoiding a construction which manifestly defeats the object of the enactment. Reference may be made to the decisions of the Supreme Court in the case of *Regional P.F. Commissioner v. Shibu Metal Works*<sup>2</sup>, (Pp. 79 to 80), *Siraj-ul-Haq v. S.C. Board of Waqf*<sup>3</sup>, (Para 16). Such construction is also supported by the golden rule of construction that in every case where the words in the statute are capable of alternative construction, they should be so construed as to avoid uncertainty in the working of the system *Collector of Customs v. D.S. and W. Mills Ltd*<sup>4</sup>, (Para 4). It should be noted that if this particular provision is interpreted in the manner suggested by the learned Advocates for the petitioners it would invariably introduce great uncertainty in the field of conducting an election.

21. For all these reasons I have come to the conclusion that Section 26 confers not only power to appoint unilaterally presiding and polling officers but also to impose on them all the obligations of such office irrespective of their consent. That the obligation follows under the statute itself is explicit from the Sections 27 and 28 and the other provisions of the rules framed under the Act.

22. Turning now to the petitioners' challenge to the constitutional validity of the provision on the interpretation as aforesaid I find that their challenge is to the effect that a provision which imposes involuntary service infringes their fundamental rights guaranteed under Articles 19(1) (d) and (g) and 21 as such, this particular provision should be declared void under Article 13 of the Constitution. I have pointed out hereinbefore that relying on the earlier authority of the Supreme Court in the cases of *Gopalan v. State of Madras*<sup>5</sup>, *Ram Singh v. State of Delhi*<sup>6</sup>, and in the case of *State of Bombay v. Bhanji Munji*<sup>7</sup>, Mr. Bose has contended that this provision is not justiciable either under Article 21 or under Article 19 as it is a provision providing for compulsory service to the State for a public purpose within the meaning of

<sup>2</sup> AIR 1965 SC 1076

<sup>4</sup> AIR 1961 SC 1549

<sup>6</sup> 1951 SCR 451

<sup>3</sup> AIR 1959 SC 198

<sup>5</sup> 1950 SCR 88

<sup>7</sup> AIR 1955 SC 41

Article 23 of the Constitution. It is undoubtedly true that decisions relied on by Mr. Bose somewhat support his contention by necessary implication but in view of the later pronouncement of the Supreme Court including the one in the Bank Nationalisation case reported in AIR 1970 Supreme Court 564 it may be necessary to reconsider the entire position. However, I think, in the facts of the present case, that if the statute can be upheld even under Articles 19 and 21 of the Constitution, it would not be necessary for this Court to go into or decide finally this objection raised by Mr. Bose.

23. Now so far as the objection is taken that this provision infringes the fundamental right guaranteed under Article 21 is concerned, the simple answer is that such right, if deprived is

being deprived in accordance with the procedure laid down by a law namely, the Representation of the People Act. Thus it comes within the sanction of the Article itself. As a matter of fact, it is for this reason that the learned Advocates for the petitioners have not laid any great emphasis on this part of their contention. On the other hand, however, it had been strongly contended by all the learned Advocates that the impugned provision in so far as it imposes unreasonable restriction on the fundamental right of free movement throughout India or practicing any profession or carrying on any occupation, trade or business guaranteed under Article 19 of the Constitution it must be deemed to be void being violative of Article 19.

24. According to Mr. Sinha, the unreasonableness of this provision arises from two aspects namely it gives unguided and unbridled power to the District election officer to pick and choose people for such appointment without any check, appeal or revision from the said decision. Secondly, it has been contended that in so far as this provision enforces people to render involuntary service under insecure conditions prevailing in the State with risk to life and personal safety, it is highly unreasonable. In support of the first contention, Mr. Sinha strongly relies on the decision in the case of *Dwarka Prasad v. State of U.P.*<sup>8</sup>, and also upon a few other decisions in the cases of *R.M. Seshadri v. District Magistrate Tanjore*<sup>9</sup>, *Pannalal Bingraj v. Union of India*<sup>10</sup>, *Harichand Sarda v. Mizo District Council*<sup>11</sup>,

25. There are, however, more answers than one to this contention of Mr. Sinha. First of all, Mr. Bose has drawn my attention to the provisions of Section 20-A of the said Act which Mr. Sinha fails to consider. This section clearly lays down that all these acts of the District election officer are subject to the superintendence, direction and control of the Chief Electoral Officer. Secondly, the said provision further lays down the norm for the guidance to the District Election Officer in discharging his functions including the one under Section 26 of the said Act. That guidance is conducting elections to the Parliament and Legislature of the State. Therefore, the power is not so arbitrary as suggested by Mr. Sinha; the power to appoint has to be exercised with reference to conducting the election to the Parliament and the Legislatures of the States and if the District Election Officer fails, his act can still be corrected by the Chief Electoral Officer. Secondly, all these decisions relied on by Mr. Sinha are clearly distinguishable. In those cases the statute left the power without any guidance in one or the other authority to impose restriction total or partial to the exercise of fundamental rights. But in the present case whatever the restriction the same has been imposed by the statute; it is one of rendering involuntary

<sup>8</sup> AIR 1954 SC 224

<sup>10</sup> AIR 1957 SC 397

<sup>9</sup> AIR 1954 SC 747

<sup>11</sup> AIR 1967 SC 829

service for a day or two setting apart the normal avocation by the persons so appointed. The authority empowered is only to make the choice of the personnel. It is an executive and administrative function which could not but be left with some authority and if the choice has been made in favour of a responsible officer like the District Election Officer who is normally the District Magistrate I cannot hold that it is in any way unreasonable.

26. Mr. Sinha contends that the District Election Officer may act erroneously or improperly and no remedy is provided in the Act. Mr. Sinha, in my view, is not wholly correct. Remedy is provided under Section 20-A of the Act. That apart, it is now well settled that a statute cannot be struck down only on an apprehension that a particular authority may abuse its power under it. Nor is it necessary that in every field of administration, there must be a provision for appeal or revision against every administrative act. A person aggrieved by an erroneous or improper order need not feel so helpless. An erroneous act when pointed out may be corrected by the authority if

the authority is not acting mala fide and if the act is improper in the sense that is not bona fide, it can always be set aside by a Court of law. There is no ground for an apprehension that Section 170 of the Act would be any bar to this. This being the position, the first part of Mr. Sinha's contention assailing the provision as unreasonable fails and is overruled.

27. That apart, the obligations imposed are not so absolute in character as Mr. Sinha thinks them to be. An appointment entails an obligation imposed on a threat of prosecution for an offence under Section 134 of the said Act. That is the only compulsion. But this Section again provides that any act or omission in breach of official duty by a person so appointed would be an offence only if it was without reasonable cause. So that on the existence of reasonable cause, it would still be open to one appointed as such to refuse to discharge the obligations on such appointment.

28. Next, Mr. Sinha contends that a statute which authorises such involuntary service irrespective of the consideration of the prevailing disturbed conditions in the State is unreasonable. Mr. Bose, however, has rightly drawn my attention to the observations of the Supreme Court in the case of *R.C. Cooper v. Union of India*<sup>13</sup>, at P. 596, where dealing with a law regarding compulsory acquisition of property their Lordships observed as follows :

"Where the law provides for compulsory acquisition of property for public purpose it may be presumed that the acquisition or the law relating thereto imposes reasonable restriction in the interest of general public."

29. As such Mr. Bose contends that when it is not disputed that the requisition of such service from the petitioners is made for a public purpose namely conducting the election to the Parliament or the legislatures of the State, the law should be presumed to impose restriction which is reasonable. So far as the objection is taken that the Legislature did not take into consideration the existence of a disturbed condition in a State, it must be said that the legislature could not foresee when it enacted the said Act that an election may have to be held under such conditions. But even then it can never be said that the legislature did not at all provide for the contingency. The provision is in the enactment itself when it was left with responsible authorities to conduct the election and fulfill the object thereof. By so providing, the legislature must be deemed to have provided that the

<sup>13</sup> AIR 1970 SC 564

authorities so constituted will take the necessary decision only with reference to the existing circumstances and by making necessary provision therefor. Every involuntary service for a public cause may involve risk and inconvenience. A prescription of law cannot be struck down only because it involves risk to life or safety. In rendering such service, a person only discharges a social obligation and an obligation to the State. No right exists without an obligation nor does the fundamental right. What is to be seen is as to whether a proper balance has been struck between the restriction imposed and the freedom affected by the imposition. Judged from this standpoint I cannot hold that the legislature never provided for contingencies as referred to by Mr. Sinha. This being the position, the law itself cannot be struck down on the ground as contended for by Mr. Sinha and it is only to be seen if the authorities under the statute have discharged their obligations in accordance with the provisions thereof.

30. Judging from this aspect I find that the respondents in their affidavit in Paragraphs 6 and 7

have clearly stated that all possible steps have been taken to safeguard the safety of the polling staff and I have no reason to disbelieve this statement made by them. This being the position, it cannot be accepted that by the appointment the petitioners have been thrown into a position where there is no security for their lives or personal safety. It may be true that in spite of all this, there may be some risk but as I have pointed out some risk may always exist in such cases; the question is to be decided on the basis as to whether any proper balance has been drawn to minimize the risk in all possible manner. That having been done, the petitioners can neither challenge the statute nor the order made thereunder on a ground as suggested by Mr. Sinha.

31. These conclusions dispose of the Rule and the two applications of Anup Roy Ghatak and Subhas Chandra De.

32. In the other application of Tarapada Chattopadhyay Mr. Palit has raised another point in support of his application. He has contended that the order that was served upon the petitioner is neither endorsed nor signed by the District Election Officer, it only bears a facsimile signature of the District Election Officer. Mr. Mukherjee appearing for the respondents has produced before me the original records to indicate that on record there is the order signed by the District Election Officer appointing the petitioner as a Presiding Officer. The order has been communicated by the impugned copy which of course does not bear either the endorsement or the signature of the District Election Officer. But as there is no specific statutory provision either in the statute or in the rules which require that communication should be made in a particular manner and when there is no case of any infringement of any such procedure laid down by the statute or the rules, in my view, communication of the substance even by serving a copy of the order bearing facsimile signature of the District Election Officer is sufficient compliance with the law.

33. In this view, the further objection taken in this application by Mr. Palit also fails.

34. As all the applications fail, the Rule is discharged and the applications are dismissed.

35. There will be no order as to costs.

Petitions dismissed.